IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

BOBBY EUGENE MITCHELL,]	
Movant,]] 1	
VS.]	CV-08-LSC-RRA-8052-S
	j	CR-07-LSC-RRA-0354-S
]	
UNITED STATES OF AMERICA,]]]	
Respondent.	j	
	<u>ORDER</u>	

In accord with the Memorandum Opinion entered contemporaneously herewith, the court orders:

- 1. That Mitchell's Motion to Vacate is GRANTED to the extent that he is entitled to an out-of-time appeal. The Clerk is DIRECTED to enter judgment in civil case CV-08-LSC-RRA-8052-S for Mitchell. The Clerk is further DIRECTED to close that case.
- 2. The Clerk is DIRECTED to VACATE the judgment in Mitchell's criminal case, CR-07-LSC-RRA-0354-S, entered on April 30, 2008, and to enter the identical judgment in that case as of the date of this order. *See United States v. Phillips*, 225 F.3d 1198, 1201 (11th Cir. 2000).
 - 3. That Mitchell is entitled to appeal to the extent permitted by the plea agreement.

A petitioner's "successful motion to file an out-of-time notice of appeal is not to be counted as a first petition for the purposes of subsequent collateral proceedings." *McIver v. United States*, 307 F.3d 1327, 1332 (11th Cir. 2002). Therefore, the court need not, and does not, reach the other grounds advanced in the petitioner's motion to vacate.

4. The time for filing a Notice of Appeal from the re-imposed sentence is 10 days from the date of the entry of judgment. *See* Rule 4(b)(1)(A)(i), Federal Rules of Appellate Procedure.

5. Attorney Michael Hanle is appointed to represent Mitchell on appeal.

Done this 21st day of June 2010.

L. SCOTT C**p**OGLER

UNITED STATES DISTRICT JUDGE